

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BANK OF AMERICA, N.A. (in its individual capacity and as agent for itself and ORIX FINANCIAL SERVICES, INC.; A3 FUNDING LP; ABLECO FINANCE LLC; STELLAR FUNDING, LTD.; MAGMA CDO, LTD.; and BINGHAM CDO, L.P.),

Plaintiff,

V.

CASTLE HARLAN PARTNERS III, L.P.,

Defendant.

CIVIL ACTION  
NO. 08-cv-11829

## **PLAINTIFF'S MOTION TO REMAND**

Plaintiff Bank of America, N.A., in its individual capacity and as agent for itself and Orix Financial Services, Inc., A3 Funding LP, Ableco Finance LLC, Stellar Funding, Ltd., Magma CDO, Ltd., and Bingham CDO, L.P., hereby moves this Honorable Court pursuant to 28 U.S.C. § 1447(c) to remand the above captioned case to the Suffolk County Superior Court, from which it was improperly removed by the defendant, Castle Harlan Partners III, L.P. (“Castle Harlan”). Castle Harlan asserts in its Notice of Removal that federal subject matter jurisdiction exists under 28 U.S.C. § 1332 because there is diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000.

As set forth more fully in the accompanying memorandum of law, this Court must remand the action to the Suffolk County Superior Court where it was brought originally because this Court lacks subject matter jurisdiction over this matter. Removal was improper because there is not complete diversity of citizenship among the parties. Further, Castle Harlan failed to remove the action within the time proscribed by 28 U.S.C. § 1446(b).

WHEREFORE, Plaintiff requests that the Court remand this action to the Suffolk County Superior Court.

**REQUEST FOR ORAL ARGUMENT**

Plaintiff respectfully requests that the Court permit oral argument on this motion.

**BANK OF AMERICA, N.A. (in its individual capacity and as agent for itself and ORIX FINANCIAL SERVICES, INC.; A3 FUNDING LP; ABLECO FINANCE LLC; STELLAR FUNDING, LTD.; MAGMA CDO, LTD.; and BINGHAM CDO, L.P.),**

By its attorneys,

/s/ Charles L. Solomont  
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Dated: November 4, 2008

**LOCAL RULE 7.1 (A)(2) CERTIFICATION**

I hereby certify that on November 4, 2008, counsel for the parties conferred concerning the issues raised in this motion, but were unable to narrow or resolve those issues.

/s/Charles L. Solomont  
Charles L. Solomont

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 4, 2008.

/s/ Charles L. Solomont

Charles L. Solomont